

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

INDECK KEYSTONE ENERGY LLC,

Plaintiff,

v.

VICTORY ENERGY OPERATIONS
LLC,

Defendant.

Civil Action No. 04-00325 Erie

Judge Sean J. McLaughlin

DECLARATION OF MARTIN R. SWABB

I, Martin R. Swabb, give this Declaration based on my personal knowledge of the subject matter described below.

1. I am the Field Service Manager of Indeck Keystone Energy LLC, which is the successor to Erie Power Technologies, Inc. ("EPTI") under a License Agreement that EPTI entered with Defendant Victory Energy Operations LLC ("VEO") for the manufacture of Keystone® industrial watertube package boilers. Before joining Indeck, I worked as an engineer with EPTI and certain of its predecessors, including Aalboarg Industries and Zurn Industries, Inc., Energy Division (collectively "EPTI"). Beginning in 1967, I was one of the engineers involved with the design and manufacture of Keystone® boilers with those companies, and I personally prepared design drawings for some models of the Keystone® M-Series that were eventually were licensed to VEO for manufacture and sale.

EXHIBIT

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2. I know from reviewing the designs, design manual, and other technical information that EPTI and its predecessors developed the technology for the Keystone® and that IKE and its predecessors consider the technology (both the design as a whole and the details of the design) to be proprietary and to represent trade secrets.
3. EPTI and its predecessors developed state of the art design features to customize O-type Keystone® boilers to the specific needs of a customer. Those features include (among other things) membrane or welded walls and watercooled burner throats. Membrane or welded walls refer to metal between adjacent tubes to form a gas-tight seal, whereas tangent tubes touch each other without any additional metal between the tubes.
4. The document identified by IKE as Exhibit 8 in its exhibits supporting its Motion for Partial Summary Judgment and opposition to VEO's Motion for Partial Summary Judgment is a true and correct copy of a Zurn Sales Brochure used while I was employed by Zurn and of which I have personal knowledge. The Brochure identifies tangent tube construction as being the standard design, which was true for the Standard M-Series. (VEO 9253-54) If a Keystone® boiler used welded or membrane walls, it was no longer a Standard M-Series. EPTI maintained (and IKE currently has) a specific drawings for the Standard M-Series that identify the design. Those drawings identify tangent tube construction.
5. I understand that Indeck sued VEO based on (among other things) VEO's use of the licensed Keystone® technology in boilers that were outside the scope of the License Agreement without the permission or consent of IKE.

6. From my employment with Indeck, EPTI, Aalborg, and Zurn Energy, those companies took appropriate steps, through confidentiality agreements with engineers and customers, stamping documents confidential, controlling distribution of drawings and design manuals, and retaining secrecy over design details such that the Keystone® designs are not in the public domain. In particular, the Keystone® designs provided to VEO are not publicly available via the internet, periodicals, engineering books, or other sources.
7. The Keystone® name has been continuously in use since the 1950s based on my review of drawings and marketing materials, as well as through my knowledge of the industry attained by interacting with customers, component suppliers and other engineers and by reading trade literature.
8. I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 1, 2006.



Martin R. Swabb